

# Compensation Insurance For Automobile Accident Victims: The Case For Compulsory Automobile Compensation Insurance

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This article is written to advocate the adoption of a theoretically sound and practically proven plan of compulsory compensation insurance for the victims of automobile accidents, regardless of fault. The proposed insurance applies the principle of workmen's compensation insurance to the hazard of automobile accidents. This insurance is proposed as a substitute for the present system of liability insurance which has proven costly, unworkable, and inequitable — and which results in an overwhelming sum of uncompensated damages due to injuries to automobile accident victims.

The savage slaughter on the highways continues unabated. Justice for most automobile accident victims continues non-existent. The terrible problem presented by the uncompensated victim is well known to most of us. Much has been said and written on the subject during the past thirty years but the victim is in the same situation as in 1925.<sup>1</sup> The wheels of justice first slowed, then came to a virtual halt, as the number of injuries and fatalities multiplied many times. The public press is paying an increasing amount of attention to this indefensible situation. The day cannot be far off when a prompt and effective solution will be demanded by everyone. Postponement of "D day" has only resulted in a multiplication of the hardship and wrong that were fully evident three decades ago.<sup>2</sup>

## I. THE NEED

The United States is well into its second million of automobile fatalities. There have been countless hundreds of millions of injuries since Henry Ford's automobile revolutionized modern travel.

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<sup>1</sup> See, for example, Marx, *Compulsory Compensation Insurance*, 25 COL. L. REV. 164 (1925); Marx, *Compulsory Automobile Insurance*, 16 NAT. MUNIC. REV., August, 1927. For a recent view, see Marx, *Let's Compensate, Not Litigate*, FEDERATION OF INSURANCE COUNSEL QUARTERLY (1953) and 30 N. DAK. L. REV. 20 (1954).

<sup>2</sup> It is not the purpose of this article to review those years. Although we realize the present and past injustices, it is primarily our duty to look forward, to come up with the answers. Neither will it be the writer's purpose to deal with the prolonged criticism of the present methods of dealing with the problem; those weaknesses are real and well known. Rather, it is his primary purpose to present a positive program of justice for the accident victim, referring to the current situation only as a basis for comparison.

In Ohio alone there were 70,000 personal injuries resulting from automobile accidents in 1953.<sup>3</sup> The burden of these injuries must fall into one of three classifications: either the individual pocket, public and private charity, or liability insurance. Generally speaking, the individual cannot bear the burden, nor is it socially desirable to view this problem as a matter of public or private charity. Voluntary liability insurance is all that society now offers to meet the problem. Since it is voluntary not everyone carries it.<sup>4</sup> Numerous uncollected judgments and the existence of many meritorious cases on which it would be futile to bring suit, bear tragic witness to this situation. The defects of the liability system which require a lawsuit to secure compensation have been re-hashed many times: the delay, the crowded court dockets, the contingent fees which inflate claims to twice their actual worth; the difficulties in securing witnesses to accidents which happen in a split second, the pressure on victims in need of funds to make inadequate settlements, the excessive verdicts by insurance-minded juries, and so on. No extended discussion of these problems is presented here. So much has been written concerning them that repetition would serve no useful purpose.<sup>5</sup>

It is evident from the very nature of voluntary liability insurance that it is not aimed at protecting victims and it does not protect the victim. It only protects the insured from his own wrongs. Yet the victim is the man who needs the protection. He is the one who will bear the burden and with whom society must be primarily concerned.

This problem has been highlighted through the years by leading jurists who can see the end result in their own courtrooms.<sup>6</sup> Within the past few weeks Justice Samuel H. Hofstadter, a New York Supreme Court Justice, writing in the New York Times Magazine, of February 21, 1954, has put the problem this way:

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<sup>3</sup> TRAFFIC ACCIDENT FACTS, Ohio Department of Highways, (1953).

<sup>4</sup> Various estimates have been made that the percentage of insured drivers varies in the several states, from fifty to eighty per cent, and in rare cases, ninety per cent. Under either the lowest or the highest estimates, the amount of uncompensated injury is tremendous. The worst drivers, and those causing the worst injuries, frequently have no insurance. Irresponsible drivers and judgment-proof defendants cause the most injuries and almost one hundred percent of them have no insurance.

<sup>5</sup> See REPORT OF THE COMMITTEE TO STUDY COMPENSATION FOR AUTOMOBILE ACCIDENTS TO THE COLUMBIA UNIVERSITY COUNCIL FOR RESEARCH IN THE SOCIAL SCIENCES (1932); James & Dickinson, *Accident Proneness and Accident Law*, 63 HARV. L. REV., 769 (1950); Grad, *Recent Developments in Automobile Accident Compensation*, 50 COL. L. REV. 300 (1950). Also, Marx, *supra*, note 1.

<sup>6</sup> Also with respect to the New York situation, see Peck, *Pillar of Justice*, an address delivered to members of the bar and executives of the Casualty Insurance Companies of the City of New York, January 14, 1952, and PECK, REPORT ON JUSTICE, February 5, 1953.

"The streets of New York are jammed with cars, the courts of New York are jammed with cases. These two statements, seemingly unrelated, provide the reason for the biggest tieup in the state's legal history. Right now cases in our courts are stalled on the calendar like the bumper to bumper traffic leading into Manhattan on a mid-summer night.

"What this delay means to the ordinary citizen is this: If he is a plaintiff, defendant or even a citizen in any kind of a personal injury case, years may pass before the parties enter the court room. This makes the judicial forum a place to be shunned, undermines respect for judicial processes and causes unfair settlements because litigants know that the passage of time does not help when a case finally does reach a jury."

This then is the current situation. Rather than bewail its existence let us put our effort into seeking a plan of social insurance which will provide equitable compensation at a reasonable cost to the victims of inevitable automobile accidents.

## II. THE PLAN MUST BE COMPULSORY

It should not be necessary to dwell at length on the necessity for compulsion. There is nothing new about it. We compel everybody to have a registration card and a driver's license. We compel every taxicab and public carrier to carry insurance. Safety responsibility laws are clearly coercive and are sidewise attempts to compel everybody to carry insurance after an accident occurs.<sup>7</sup>

When the interests of society have demanded it, we have never hesitated to make compulsory rules and regulations concerning our conduct. Arguments that compulsion is "contrary to the American way of life" have no historical support in the field of American legislation.

The system must be compulsory to make it uniform and to protect everyone who is killed or injured in an automobile accident. In no other way can we insure compensation to all automobile accident victims.

## III. ABANDON THE DOCTRINE OF FAULT

Since the victim is the one who needs protection, the impediment of "fault" which now bars the way to compensation, must be replaced by accident insurance. Most of the courtroom drama, and the resultant congestion of the courts which Justice Hofstadter describes,<sup>8</sup> is a result of the effort to determine fault. In many

<sup>7</sup> If it is wise to establish financial responsibility after an accident, why not do it before? Since these laws are not applicable until after an accident involving death, damage, or injury, a large segment of the population remains unprotected. The door to inadequate settlements remains wide open, and all of the defects of the liability system are retained. See OHIO REV. CODE §§ 4509.01 to 4509.99, inclusive. "

<sup>8</sup> *Supra*, p. 135.

states, including Ohio, a plaintiff is denied any recovery if his actions contributed as little as one per cent to the happening of the accident. The questions of negligence and contributory negligence require many trial days and frequently have little relation to the substantial justice of the case. There is little justice in a system which requires the automobile accident victim to wait years before his case will even be called for trial; and if there is a verdict in his favor, he must still wait months while the case wends its way through the appellate process to the Supreme Court. Should final judgment be entered in the plaintiff's favor, he may not know whether it is collectible until after the sheriff makes a levy and return. Under this system, thousands of victims receive nothing. Additional thousands are forced to accept inadequate settlements.

The whole idea of liability predicated upon fault is largely a legal fiction. In the old days of the horse and buggy, accidents happened slowly, and the injuries were relatively few and less severe. It was more feasible to apportion fault and blame. Today, automobiles move at high speed, accidents happen in split seconds, death or serious injury almost always ensues. It is practically impossible to determine in a vast majority of cases who was to blame or how to apportion the blame. The law places the impossible burden of collecting the evidence, getting the names of witnesses, and finding the defendant, upon the victim.

Further, the automobile accident is no longer a question of the individual. It is a social hazard. The traffic accident is an inevitable result, and a by-product of, motor-minded American progress. The National Safety Council can predict with amazing accuracy the number of accidents which will occur on any given week-end or holiday. Every measure which can be taken to reduce the number of traffic accidents deserves support. Every method to make the driver more safety-conscious should be employed, and traffic laws should be strictly enforced. However, safety slogans and law enforcement will not eliminate the tremendous toll taken by death and injury. The millions of automobiles on the highways today cannot be operated by human beings at high speeds without a definite percentage of accidents due to mechanical and human failures. Hence, we are dealing with a social problem—a legislative problem. That problem is insuring financial protection to the victim, and to the family whose support and earning power have been destroyed by traffic tragedies.

A parallel in point is found in the history of industrial accidents which led to compulsory workmen's compensation insurance without regard to fault, as a substitute for employers' liability insurance. Prior to 1910 injured workmen were relegated to the liability system as the only means of recovery for death or disability due

to accidents. This meant the same type of personal injury suit against an employer to recover compensation as the automobile victim is now compelled to bring. Employers were protected by employers' liability insurance, which was the same as automobile liability insurance with respect to automobiles. The outrageous delays, the difficulty in establishing negligence, the harshness of the contributory negligence rule, the evils of the ambulance chaser and the bedside settlement, the inequity of the inadequate and excessive verdict, and the exorbitant contingent fees, combined to cause the abolition of the entire system and the adoption of workmen's compensation in every state of the nation.<sup>9</sup>

One additional evil which exists in automobile accident liability did not exist where a workman sued his employer — the employer was financially responsible, whereas the uninsured automobilist is usually both reckless and financially insolvent. The philosophy underlying workmen's compensation was that regardless of safety measures in the factory and mine, death and injury were an inevitable hazard incident to industrial work. Automobile accidents are an inevitable result of the necessary use of the highways today. The use of motor vehicles in a motorized age is a necessity to carry on trade, to perform work, and to travel. The use of automobiles is compulsory, not voluntary; the risk of injury is compulsory; protection by insurance should be compulsory, and without regard to fault.

#### IV. COMPENSATION MUST BE PROMPT AND ADEQUATE

"Justice delayed is justice denied."<sup>10</sup> The delay in New York is not unique. Similar delay exists elsewhere. In Chicago three to four years must elapse before a personal injury case is called for trial.<sup>11</sup> In less congested centers, every lawyer knows the usual continuances and delays encountered in getting a case to trial.

The problem of an inequitable award presents numerous difficulties. The amount of the award as determined by the verdict of a jury has small, if any, relation to the degree of injury suffered. The amount of the claim, by the very nature of the system, is greatly inflated by the contingent fee. There may be no recovery at all in the case of the judgment-proof defendant or in the case of the plaintiff who is unable to prove that the accident was solely due to the fault of the defendant. The net compensation may be ridiculously small due to settlements by a plaintiff unable to afford the long delay be-

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<sup>9</sup> See OHIO REV. CODE §§4231.01 to 4123.99, inclusive; OHIO CONST., ART. II, §35.

<sup>10</sup> Peck, *The Pillar of Justice*, *supra*, Note 6. "There is stark demonstration that justice delayed is justice denied, and it should hang heavy on the conscience of every one of us."

<sup>11</sup> LIFE MAGAZINE, November 10, 1952, p. 126.

fore his case comes to trial. The verdict may be grossly excessive due to the fact that the plaintiff has a good trial lawyer and the jury feels that the defendant is insured anyway.

Out of the recovery, the plaintiff must pay his lawyer a contingent fee equal to one-third or more of the amount recovered, and may even have to pay a contingent fee to his doctor or medical expert.

Compulsory compensation insurance corrects both of these evils. It insures prompt payment of an adequate and equitable award based upon the degree of disability, without a deduction for a contingent fee.

In working out fair and reasonable schedules of compensation we can avail ourselves of many years' experience with workmen's compensation. If these schedules are too low,<sup>12</sup> it is feasible to increase the awards and still stay within the framework of reasonable cost. Workmen's compensation cases in Ohio are generally settled within a few weeks, as compared with a delay measured by years in automobile accident cases. They are settled in accordance with a fixed schedule; the amount of the settlement is determined by the extent of the injury and disability involved. Payment is made regardless of fault and may be increased as much as fifty percent for violation of specific safety requirements. Automobile accident compensation insurance will assure the victim of an equally prompt and equitable award.

## V. EXPERIENCE

Workmen's compensation furnishes extensive and adequate experience. This experience can be adapted to cover automobile accident compensation insurance. Additional experience with respect to insurance covering automobile accidents is also helpful. Experience in Massachusetts proves that the compulsory feature is practicable and that financial responsibility can be established uniformly with respect to all automobiles on the highway. Massachusetts has had compulsory insurance for more than a quarter of a century.

However, the insurance required in Massachusetts is liability insurance. Although this establishes financial responsibility within the policy limits, it magnifies all of the evils of the liability system and compensation via the personal injury suit. It has clogged the courts, caused excessive litigation, multiplied exaggerated claims, produced unreasonable verdicts, and induced unreasonable and inadequate settlements. Massachusetts' experience demon-

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<sup>12</sup> The Columbia Committee referred to above found, however, that auto accident victims would have averaged a greater recovery under workmen's compensation schedules than they actually received under the liability system. This is due, of course, to the fact that so many receive absolutely nothing under the present system.

strates the need for compulsory compensation insurance in order to promptly and equitably pay the injured and the dependents of the dead. Further, the cost of liability insurance due to the personal injury system, and in spite of state regulation, is high in comparison to the cost of compensation insurance. Although high, the insurance carriers complain it is not high enough and that they are unable to make a fair profit — a profit which they would make if they wrote compulsory compensation insurance with liability limited to fixed schedules of payment.

On the other hand, our experience with the safety responsibility laws, in effect in most states, proves that the voluntary system will not work, and that without compulsion the public does not secure protection from the uninsured and irresponsible motorist. From ten to thirty percent of all drivers remain uninsured. Nor are these laws operative until after the first accident; and they leave all of the evils of liability via the personal injury suit untouched. The unsatisfied judgment laws in effect in a few states are no better. Without exception it is still necessary under these laws for the plaintiff to pursue his long battle with the court system and to depend upon the liability system for his compensation. These laws are simply patch-work. They are hasty attempts to cover the open sores which the voluntary liability system has left upon society. While they may succeed in quieting the public demand for a few months or years, they can have no lasting success because they do not reach the source of the difficulty.

The proposal for compulsory compensation insurance, which was thought sound in principle twenty years ago,<sup>13</sup> has been proved practicable as a result of seven years' experience in the province of Saskatchewan, Canada. In that province everyone who drives an automobile is compelled to have a driver's license, and, in addition, to have automobile accident compensation insurance.<sup>14</sup> Under that insurance everyone who is hit and the dependents of everyone who is killed, are paid compensation according to the provisions of the Act without regard to fault, just as accident insurance policies now pay for disability as a result of accident, regardless of fault. In addition, the Saskatchewan Act provides an additional right to bring suit against a tortfeasor if negligence is alleged. If the plaintiff is

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<sup>13</sup> See the report by the COMMITTEE TO STUDY COMPENSATION FOR AUTOMOBILE ACCIDENTS, *supra*. Note 5. This Committee made a careful, thorough, and actuarial study of whether compensation insurance could be successfully applied to death and personal injury resulting from automobile accidents. The results of the study were published in 1932. The conclusion of the Committee was that such a plan was practicable and advisable.

<sup>14</sup> SASKATCHEWAN, REPORT OF SPECIAL COMMITTEE ON THE STUDY OF COMPENSATION (1947). See also RESEARCH REPORT ON THE SASKATCHEWAN PLAN TO THE MOTOR VEHICLE ACCIDENT COMMITTEE, LEGISLATIVE COUNCIL, STATE OF WISCONSIN (1952).

successful the amount paid under the compensation law must be credited in reduction of any judgment obtained in the negligence action. The same Act protects the defendant by giving him liability insurance. The primary purpose of the Act, however, is to compensate persons injured or dependents killed in motor vehicle accidents, regardless of fault. This applies to any Saskatchewan resident involved in vehicle accidents inside the province, or any Saskatchewan resident riding in Saskatchewan vehicles on highways anywhere in the North American continent.

Death benefits for the primary dependent are now \$5,000, and for each secondary dependent, \$1,000, up to a total of \$10,000 for one death, in addition to which funeral expenses are paid. Dismemberment benefits run up to \$5,000.<sup>15</sup> The award for disability resulting in loss of income runs up to \$25 a week, with a maximum limit of \$3,000. Every motor vehicle owner and operator who, through negligence, causes bodily injury or death, is in addition protected up to a limit of \$10,000 for one person, or \$20,000 for more than one person injured or killed in one accident. Property damage is also covered up to a limit of \$2,000 for one accident. Additional benefits include collision insurance, hail, theft, flood, wind, storm, and falling aircraft insurance, all having a \$100 deductible clause.

The cost of the insurance package is surprisingly low. For a 1953 Chevrolet, the cost is \$20, plus the driver's license fee, or a total of \$22. This is in marked contrast to the premium paid for similar coverage in Ohio. *Further, it provides protection which cannot be bought anywhere in the United States — namely, compensation for every victim of every automobile accident regardless of fault.* It also provides for the payment of medical and hospital expenses. In Saskatchewan it is unnecessary to employ a lawyer or bring a lawsuit to obtain the compensation provided by the Act. In the event of the death of the breadwinner, his widow and children are guaranteed prompt payment of adequate compensation. They are not thrown upon charity or public institutions. They need not undergo an agonizing wait for years without funds. The compensation is paid entirely to the family and is not diminished by contingent fees. The award for disability is sufficient to meet the emergency caused by injury or disability, and meets the net average sum paid to claimants in the United States. It is not subject to the criticism of nothing to many, too little to more, and too much to a few.

It is a pilot plan. Saskatchewan is primarily a rural province. It does not have the heavy traffic to be found on the roads of Ohio. There are currently more than three million automobiles on Ohio roads, whereas in Saskatchewan there are approximately a quarter of a million. On the other hand, the ratio of cars to population is not

<sup>15</sup> SASKATCHEWAN AUTO INSURANCE AND SAFETY GUIDE (March, 1953).



greatly dissimilar. In Ohio, the ratio of cars to population is 37 per cent, whereas in Saskatchewan the ratio is 28 per cent. The seven years is an adequate test, and proof that compulsory compensation insurance is practicable and that the cost is reasonable. The residents of Saskatchewan are happy with the system and no one proposes to return to the old voluntary liability insurance.

#### VI. Cost

An analysis indicates that the cost of compulsory compensation insurance would be less than the cost of the present liability insurance. The legitimate question of cost is one which is not difficult to solve, at least in general terms. In Ohio there are approximately 3,200,000 motor vehicles.<sup>16</sup> In 1953 there were approximately 70,000 injuries and fatalities on Ohio highways. We know considerable about the cost of these accidents. A portion of them are now covered by compensation insurance, *i.e.*, all employee drivers are covered by workmen's compensation. When injury occurs to an employee involved in an automobile accident, he receives a prompt payment of compensation, as provided by the Workmen's Compensation Act. In Ohio, from figures supplied by the Industrial Commission, we know that the average compensation paid out for injury and death is \$433. This payment includes fatalities and also those cases involving only superficial injury. The average automobile injury, though, is somewhat more serious than the average workmen's compensation injury. Although as stated above, there are a number of automobile accidents covered today by workmen's compensation in Ohio, there is unfortunately no breakdown available which computes the average amount paid out in automobile accident cases exclusively. However, the state of Illinois has computed these figures. The writer has just completed a study of the Illinois situation, which follows a marked similarity between Illinois and Ohio. The states have approximately the same number of motor vehicles, the same population, the same number of automobile accidents, and the same average payment per claim by the Department of Workmen's Compensation, *i.e.*, \$433. In Illinois figures are available which show the average payment made to employees as a result of automobile accidents, namely, \$559. If we assume that the same figure would be applicable to Ohio employee injuries due to motor vehicle accidents, it appears that the payment in automobile accident cases is higher than the general average, due to the fact that auto accidents result in more frequent death and more serious injury.

Taking the highest average shown by the above experience in Ohio and Illinois, we find that it would require \$559 to compensate for each injury and death arising out of automobile accidents, ac-

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<sup>16</sup> Figures supplied by Department of Highways, State of Ohio.

cording to the same basis as workmen's compensation is now paid in those states. It would require a fund of \$39,130,000 to pay like compensation to all of the 70,000 persons injured in Ohio automobile accidents last year. Hence, an average premium of less than \$13 per automobile would be adequate to produce the above fund (\$13 times 3,200,000 equals \$41,600,000). This is sometimes called the "pure premium" to which a further sum must be added to cover the insurance agent's commission, the cost of administration, cost of investigation, a reasonable profit, and so on. If we add forty per cent to that figure, for loading to meet these costs (a figure which is generally considered more than adequate, in view of the elimination of expenses incident to liability insurance) we arrive at a total premium of approximately \$19 per automobile. In Ohio this would produce a fund of approximately \$60,800,000, which is sufficient to pay compensation to every person injured and to the dependents of every person killed in an Ohio automobile accident, to pay agents' commissions and to provide for the other costs and profit detailed above. It is obvious that the passenger car would pay less than the truck and public carriers, but we have arrived at an average figure.

As a test check, in 1952 the insurance companies writing public liability insurance in the automobile accident field received a total of \$61,963,296 in premiums. They paid out in that same period, to liability claimants, \$24,505,363. Inasmuch as this figure does not include losses incurred but not paid, insurance actuaries customarily add twenty-five per cent to that figure in order to arrive at a figure which represents total incurred losses for that period. In this case it results in a total figure of approximately \$30,625,000. This figure verifies the figure of \$39,130,000 which we have already calculated would be necessary to meet the total cost of all Ohio automobile accident injuries.<sup>17</sup>

These figures are also supported by the Illinois experience, and by a Wisconsin study which the writer made two years ago. They conclusively show that the cost of such a plan would be less than the current cost of liability insurance. As a matter of fact, the price of Ohio insurance giving the protection equal to that discussed here, is approximately double the estimated premium for compensation insurance.

The present high cost of liability insurance gives the victim no

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<sup>17</sup> The difference of approximately \$9,000,000 of course is partly attributable to the fact that there is at least that much in uncompensated automobile accident injuries, as well as to the fact that under the liability system too many receive too little and a few receive too much. The figures above showing the premiums received and claims paid by Ohio insurance companies for 1952 are taken from the *SPECTATOR YEAR BOOK* (1952), and from the *86TH ANNUAL REPORT OF THE OHIO SUPERINTENDENT OF INSURANCE* (1952), pp. 87-90, and pp. 100-103.

protection, hence if it be argued that workmen's compensation awards are too small, there is a large area for increase in these awards, under an automobile accident compensation plan, without bringing the cost up to the present cost of liability insurance.<sup>18</sup>

#### VII. MISCELLANEOUS

Certain elements involved in this plan call for a limited amount of comment. One of the problems which has arisen in Saskatchewan is the provision for the retention of the personal injury suit.<sup>19</sup> The writer feels that the personal injury suit should be abolished, with a possible exception in cases dealing with wilful, wanton, or criminal misconduct.<sup>20</sup> The practical operation of this limitation would give maximum protection to automobile owners from ordinary negligence suits. It would remove the great overload of personal injury suits from the courts, and limit such actions to the exceptional case where the wilfulness and wantonness of the driver warrants the additional deterrent of a civil action in addition to the penalties of the criminal law.

The problem of administration is another one which has bothered many experts in this field. In most states, unlike Ohio, workmen's compensation is administered by private carriers, alone or in competition with state funds. There is no reason why the automobile accident fund could not be administered by private carriers and since it is always our desire to have enterprise in private hands wherever possible, it is hoped that this will be the result. On the other hand, some state regulation is undoubtedly necessary, and in fact, is present right now, as, for example, in the assigned risk plans which ap-

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<sup>18</sup> Under the Ohio Act, a maximum of \$32.20 per week is paid for disability. Examples of the maximum allowances under the Ohio Act are as follows: Death, \$9,000, plus funeral benefits; loss of leg, \$6,500; loss of an eye, \$4,025; loss of a thumb, \$1,932. Inasmuch as the average payment to employees in automobile accidents is now \$559, we can assume that an increase in the above schedules of fifty percent would result in an average payment of \$838. On the basis of 70,000 injuries, a fund of \$58,660,000 would be necessary to meet the cost. Since there are 3,200,000 automobiles in Ohio, a premium of \$18.30 per car would supply this fund. The forty per cent increase referred to in the text would raise this premium to \$25.62, which premium would result in a fund of \$81,984,000.

<sup>19</sup> The Saskatchewan Act allows the institution of a civil action wherever "negligence or mistake in judgment" is involved.

<sup>20</sup> This is the requirement under Ohio's Guest Statute, OHIO REV. CODE § 4515.02. By limiting actions by guests against drivers, to cases involving wilful or wanton misconduct, such suits have been practically eliminated in Ohio. The ultimate goal, however, is abolition of the personal injury suit in automobile accident cases. That goal can be achieved by following the pattern of the Ohio Workmen's Compensation Act which provides additional compensation for injury caused by wilful violation of law and increased the premium of the employer. This determination is made by the Industrial Commission.

portion had risks among the various companies. The great fear of the insurance companies to state administration is not warranted, as workmen's compensation remains in private hands in most of the states.<sup>21</sup> Yet this is the real reason why insurance companies uniformly oppose a plan of automobile accident compensation insurance; all of the other arguments are mere shadows which do not disclose the true reason for their attitude.

#### VIII. THE PROTECTION OFFERED

The advantages to the victim are obvious. No longer will he be deprived of the ability to earn money and at the same time receive absolutely nothing for many years. No longer will he be forced to accept inadequate settlements because he and his family must eat. No longer will he be called upon to find witnesses, hire lawyers and go through a long courtroom battle, which might result in complete defeat on the one hand and in an exaggerated award on the other. He will be paid according to schedule. It has been said, as a measure of criticism, that payment according to schedule is unjust because a housewife would receive the same amount for an injury as would a factory worker and a factory worker would receive the same amount as would a professional man. These criticisms are not valid, since actuaries have devised schedules which are tailored to various types of activities. Furthermore, even if such schedules are not devised, the individual who is dissatisfied will undoubtedly calculate his risk under the fixed compensation schedule and provide for such further insurance as might be necessary in his case by way of ordinary accident insurance. This plan is definitely not a state security plan. It does not promise to compensate everyone according to his particular need or to his particular station in life. What it does is to provide a minimum amount of fixed compensation and leave it to the individual, as is proper in a free enterprise economy, to judge for himself his own additional needs.<sup>22</sup>

The advantage to the owner or driver is equally as great. No longer will he be forced to guess as to his liability in the event of an accident. No longer will he have to worry about whether or not his insurance will fully protect him. His liability will be fixed under

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<sup>21</sup> In all but Ohio, West Virginia, Nevada, Wyoming, North Dakota, Oregon and Washington, Workmen's compensation insurance is written by private carriers alone and in competition with state funds.

<sup>22</sup> At least in the first instance, automobile compensation insurance could be limited to personal injury and death only, since it is in this area that the human problem exists. Saskatchewan, of course, has applied the theory to property damage as well, and the premiums quoted for Saskatchewan insurance in the text include the cost of this insurance. The Simpson Bill, H.B. 430, introduced in the Ohio Legislature in 1949 provided for compensation for injury, death and property damage.

the law and there will be no danger of a judgment rendering him penniless and bankrupt.

The advantage to the guest or passenger will be even more marked. The guest is today without a remedy when the driver through ordinary negligence causes an injury. He can only hope that the driver has voluntarily obtained medical payment coverage in his insurance policy, if indeed there is any insurance at all. Under the compensation plan there would be no problem of liability and the injured guest would receive precisely the same compensation as the injured pedestrian.

The advantage to the public has already been discussed. The burden of the uncompensated injury would be removed from the public and private charities which must now shoulder the loss. Society would be relieved from the tremendous burden of the horrible spectacle of uncompensated injury. The courtrooms would once again be places where the wheels of justice could turn smoothly and without delay, for the worst impediment to the prompt consideration to all cases would be removed.

Although they are among the prime opponents of such a plan, there would be no small advantage accruing to the insurance companies. For the past few years most insurance companies have claimed to be writing liability insurance in this field at a loss.<sup>23</sup> Rising courtroom verdicts, caused by insurance-minded juries, and the rising cost of repair have forced premium rates up and up and there is a great deal of worry in the field that they may be pricing themselves out of a market. One thing is certainly true: It is axiomatic that the higher the price goes, the fewer will be those who buy the insurance. With the accompanying rise in highway injuries, the problem is going to get much worse, not better, as time goes along.

The insurance companies in a compensation plan would be in a far better position. They would be able to calculate exactly the amount of their risk, since fixed compensation schedules would be available. No longer would their risk be subject to the caprices of the jury verdict. No longer would those verdicts be inflated by plaintiff's counsel fees. The cost of defending a growing amount of litigation would be wiped out.

More than anyone else the insurance industry knows that settlements today are effected with a great deal less than requirements on the liability system. Where claimants are willing to accept reasonable compensation for injuries, many claim agents are

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<sup>23</sup> See Force, *Auto Business Has Toughest Year*, NATIONAL UNDERWRITER, June 27, 1952. A press release dated August 11, 1952, by the National Bureau of Casualty Underwriters states in part "... since 1946, when rates began to rise, the stock companies' underwriting losses from automobile liability insurance have reached a total of \$200,000,000."

making adjustments on a compensation basis rather than risk the case to the vagaries of a jury trial. Furthermore, the increased premium revenue under a compulsory scheme would swell the income from which all of these expenses must be met.

### IX. OBJECTIONS

One of the best ways to weigh the advantages of this plan is a frank appraisal of the objections which have been made to it.<sup>24</sup> Very few of the most commonly voiced objections have any merit at all. For example, the charge is made that such a plan would encourage carelessness, inasmuch as the victim would be paid whether he was guilty of contributory negligence or not. This charge is utterly fantastic. No one is going to allow himself to be injured in order to secure compensation which is less than his weekly wage. Experience with workmen's compensation proves this. Furthermore, the present system has much to offer the malingerer because of excessive jury verdicts. The charge of encouraging carelessness has no more merit than the charge that the driver who is presently covered by liability insurance drives more carelessly because of the fact.

The claim is also made that the automobile accident compensation plan is socialistic in nature. This is a stock-in-trade complaint about anything new. It has been pointed out that the compensation plan sets only a minimum compensation with the remainder being left to the individual, as is proper in a free enterprise economy. Forty years ago the same claim was made concerning workmen's compensation and it had no more merit than it does now. Workmen's compensation is the law in every one of the forty-eight states. The old system of liability has been abolished because it is not fair, it is not right, it is not equitable and it is not just. It is socially desirable to see that large masses of the public are not rendered destitute by accidents over which they have no control, and this is certainly not socialism.

It is also said, although this cannot be in the nature of a valid criticism, that the system would be new and unprecedented. But even taken with a grain of salt this criticism can be answered as not being true. For example, as has already been alluded to, workmen's compensation already covers many employee-drivers who are paid in the event of injury on a compensation basis. All accident insurance is based on the compensation principle and is paid without regard to fault, as is collision insurance in the automobile accident field. The compulsory compensation plan has been in success-

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<sup>24</sup> For an excellent discussion of this and other plans, see *THE PROBLEM OF THE UNINSURED MOTORIST (A REPORT TO THE SUPERINTENDENT OF INSURANCE)*, New York, 1951, and *REPORT ON PROBLEMS CREATED BY FINANCIALLY IRRESPONSIBLE MOTORISTS*, ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK (1952).

ful operation in a province of Canada for more than seven years.

And then there is the "bathtub" argument. This is the one which implies, again, that a compensation plan means too much government interference, i.e., why not compensate the man who slips and falls in his bathtub at home? The answer to that criticism is evident. A fall in a bathtub is an isolated event. It is not a social problem. It is not a product of a fast moving society which leaves thousands of victims without means of support or sustenance. The automobile accident victim, on the other hand, is a very marked social problem, both because of his number and because of the source of his injury.

It is also said that such a plan would be exceedingly difficult to work out. It is certainly true that the actuarial schedules, the drawing of a proper law and the setting up of the administration to enforce it, present no simple problem. It is also true that workmen's compensation does not present a precise parallel. The answer to these criticisms is that they are no criticism at all. In every other science men attack new problems and come up with new solutions. The same spirit is necessary in the social sciences. Certainly the American genius which has triumphed in so many varying fields of enterprise should not blanch at a social problem which demands solution. The general lines of the solution have been drawn and the attempted criticism that it is not simple is eloquent testimony to the complexities of the situation and the necessity for action.

In this same category fall the criticisms that workmen's compensation or the Saskatchewan plan, or the Massachusetts Compulsory Liability Insurance Law are not perfect, or that they do not furnish exact precedents for an automobile accident compensation plan. Of course they are not perfect, and of course they are not exact precedents. They do, however, furnish valuable lessons in experience from which we can draw in adopting that which is suited to our purposes and discarding that which is not. Perfection will not be achieved short of *Nirvana*.

Saskatchewan especially has been a proving ground for a compensation plan and whatever the defects of that particular system, the plan itself has been a huge success.

#### X. THE TIME IS NOW

Insurance companies should be willing to fairly examine the plan and attempt to work it out on an actuarial basis. It may be that difficulties might arise, requiring minor changes in the framework which the writer has proposed; but there is nothing rigid about it and it is open to suggestion. What is needed is a constructive approach by the insurance industry to this problem which is so vital to all of us and to all of it.

As Justice Hofstadter says in concluding his article:

"Workmen's Compensation has proved itself over the years; auto accident compensation can work too. Through it we will at least recognize that although the streets will always be jammed with cars the courts need not be jammed with negligence cases and thus justice will flow back to all the people in the state."<sup>25</sup>

The patchwork ideas, such as Safety Responsibility Laws and compulsory liability insurance can do no more than delay for a few years the public outcry. The insurance industry now has the opportunity of meeting the problem and drafting its own plan along the lines which have been indicated.<sup>26</sup> If it provides the same type of stubborn and unreasoning opposition with which it fought workmen's compensation in Ohio, the people will demand and get the same kind of a compensation law with respect to automobile injuries and fatalities as the public demanded and got in Ohio with respect to industrial accidents—namely, a compulsory non-competitive state fund. The writer has tried to help the insurance industry and to encourage it to grasp the opportunity to save itself from this alternative. However, unless the insurance companies provide a privately underwritten plan, it is comparatively easy and probably cheaper for the state to write this insurance along the familiar Ohio pattern.

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<sup>25</sup> Hofstadter, *supra*, p. 135. There is an excellent discussion urging the private insurance companies to adopt a compensation plan. See Lewis *The Casualty Claimant*, BEST'S FIRE AND CASUALTY NEWS, March, 1954.

<sup>26</sup> The attitude of the insurance companies toward compulsory laws is illustrated by the battle they have waged against a proposed compulsory liability insurance in the state of New York. Full page advertisements, carried in New York's leading newspapers, charge that compulsory insurance will not protect the public against:

- "1. Uninsured out-of-state drivers causing you loss in New York State.
2. Uninsured drivers causing you loss outside New York.
3. Stolen car drivers causing you loss anywhere. (Any persons driving without permission of the owners.)
4. Drivers operating illegally without insurance causing you loss in New York State." (New York Daily News, Friday, Feb. 26, 1954).

Obviously, no law can protect against those who are not covered by it (such as out-of-state drivers) or those who wilfully do not comply with it (stolen car drivers or law violators). The remedy to these so-called criticisms is uniform laws in the several states and strict enforcement of penalties.